IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 7486 of 2005(N)

OS.333/1994 of ADDL.M.C.,KOZHIKODE-I
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PETITIONERS:
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1. PACHATT VELAYUDHAN, AGED 72 YEARS,
S/O. APPU, KALATHINKUNNU AMSOM DSOM,
KOZHIKODE TALUK.

2. DO. VANAJAKSHI, AGED 67 YEARS,
W/O. VELAYUDHAN, DO.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
SRI. KADOTH PUSHPARAJAN

RESPONDENTS:
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1. KOTTASSERI KAMALA, D/O. KRISHNAN,
KALATHINKUNNU AMSOM DESOM, KOZHIKODE TALUK.

2. THALIYADATH LAKSHMANAN S/O. KITTA, DO.

3. N.LEELA W/O. KANDOTH BALAKRISHNAN,
KANDOTH PARAMBA, YMCA CROSS ROAD, CALICUT.

4. N.VINOD KUMAR,
S/O. KANDOTH BALAKRISHNAN, DO.

5. N.SHAMOD KUMAR
S/O. KANDOTH BALAKRISHNAN, DO.

BY ADV. SRI.V.K.BALACHANDRAN
SRI.S.SHYAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE PARTITION DEED NO.599/1954 S.R.O., KOZHIKODE DT.10.7.1954.

EXT.P2: COPY OF THE DOCUMENT NO.909/1958 DT.22.12.58 S.R.O. KOZHIKODE.

EXT.P3: COPY OF THE COMMISSIONERS REPORT IN O.S.333/94 DT.25.6.2003.

EXT.P3(a): COPY OF THE PLAN SUBMITTED BY COMMISSIONER -DO-

EXT.P4: COPY OF THE APPLICATION I.A.3276/03 IN O.S.333/94 PRINCIPAL MUNSIFF-1, KOZHIKODE.

EXT.P5: COPY OF THE COMMISSIONER'S REPORT DT.3.1.2004 IN O.S.333/94.

EXT.P6: COPY OF THE AFFIDAVIT ACCOMMPANYING THE I.A.1419/2004 DT.2.4.2004.

EXT.P7: COPY OF THE ORDER OF THE PRINCIPAL MUNSIFF-I, KOZHIKODE DT.9.2.2005 IN I.A.1419/2004 IN O.S. 333/1994.

RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF DOCUMENT DATED 12.12.1977.

EXT.R2(B): COPY OF THE ORDER IN C.M.P.784/1994 IN S.A.201/1987 OF THE HON'BLE HIGH COURT OF KERALA DATED 25.10.1995.

EXT.R2(C): COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENTS IN EXT.P4.

EXT.R2(D): COPY OF THE COUNTER FILED BY THE RESPONDENTS IIN EXT.P6.

TRUE COPY

P.A.TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 7486 OF 2005

Dated this the 29th day of June, 2007

JUDGMENT

Normally, I would not have interfered with Ext.P7 order since apparently the same is a reasoned one. But I notice that the learned Munsiff himself had rendered assistance of the surveyor to the advocate commissioner for identifying the properties. The commissioner had reported that he had not availed the assistance of the surveyor since the parties were not able to show him the properties is question. In view of the finality attained in the matter of rendering assistance of surveyor to the advocate commissioner, I am of the view that the learned Munsiff should have directed the advocate commissioner to have a measurement of the properties with the assistance of the surveyor who had been deputed by him earlier. To that extent Ext.P7 has to be interfered with.

I interfere with Ext.P7 and direct the learned Munsiff to give a specific direction to the commissioner to have a measurement of the property in question and that endeavour can be made by the commissioner to identify the property with reference to Ext.P2 document aslo. The suit being of 1995, the learned Munsiff will pass appropriate orders and ensure that the Commissioner files the report on time. Once

the report is available, the learned Munsiff will special list for trial and dispose of the same so that this long drawn out litigation will come to a quietus.

PIUS C. KURIAKOSE, JUDGE

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